

no-fault newslines

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10.19.10

Court of Appeals Offers First Interpretation of New *McCormick* No-Fault “Serious Impairment” Standard

By Drew Broaddus

In *Camaj v Home Owners Insurance*, unpublished, Plaintiff sustained injuries to his neck, back, hips, and head. He filed a complaint against defendant, his automobile insurer, alleging that he was wrongfully denied uninsured motorist (“UM”) and PIP benefits. (More specifically, the UM claim was for noneconomic damages and excess work loss damages). With respect to the UM claim, the trial court granted defendant’s motion for summary disposition, finding that plaintiff did not suffer a serious impairment of an important body function. The trial court found that plaintiff *did* suffer an objectively manifested impairment of an important body function, which was medically documented. Moreover, a doctor attributed this impairment to the accident. However, utilizing the now-reversed *Kreiner* standard, the trial court determined that plaintiff could not demonstrate that his impairment affected his general ability to lead his normal life.

The Court of Appeals remanded “for further proceedings consistent with *McCormick*’s directives.” The court explained that, until recently, to meet the threshold, the impairment of an important body function must have affected the “course or trajectory of a person’s entire normal life.” In determining whether the course of a person’s normal life has been affected under the now-reversed *Kreiner* test, a court had to compare the plaintiff’s life before and after the accident and evaluate the significance of any changes

on the course of the plaintiff’s overall life. This involved consideration of factors such as the nature and extent of the impairment, the type and length of treatment required, the duration of the impairment, the extent of any residual impairment, and the prognosis for eventual recovery. Trial court employed this analysis in *Camaj*.

SECRET WARDLE NOTES:

Although *Camaj* is the first Court of Appeals opinion discussing *McCormick*, it is not especially helpful. The court summarized the factors that are to be considered under *McCormick*, but declined to actually apply them to the facts of the case. The trial court’s treatment of the issue on remand may be more informative. Until an appellate court is called upon to actually apply the *McCormick* test, *Camaj* is the best guidance we have.

The most interesting aspect of *Camaj* may be that it applied *McCormick* retroactively without discussing the issue. The *McCormick* opinion did not expressly address its retroactive effect. However, the general rule is that decisions are to be applied retroactively, and are only applied prospectively as an “extreme measure.”

Justice Weaver was the swing vote in *McCormick*, as she was in several other decisions issued between January 2009 and August 2010. It is unclear how her recent resignation from the Court, and her replacement by Justice Alton Davis, will influence *McCormick*’s application.

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However, *McCormick* removed these factors, finding that “the analysis does not lend itself to any bright-line rule or imposition of [a] nonexhaustive list of factors, particularly where there is no basis in the statute for such factors.” *McCormick*, at Slip Op at 35.

Instead, *McCormick* stated that, in order to determine “the effect or influence that the impairment has had on a plaintiff’s ability to lead a normal life,” courts must compare “the plaintiff’s life before and after the incident.” *Id.* at 20. In order to do this comparison, according to *McCormick* (as applied by the Court of Appeals in *Camaj*), courts must consider three points. *McCormick*, at Slip Op at 20-21.

First, the statute merely requires that a person’s general ability to lead his or her normal life be *affected*, not destroyed. Thus, courts should consider not only whether the impairment has led the person to completely cease a pre-incident activity or lifestyle element, but also whether – even though the person is able to lead his or her preincident normal life – the person’s general ability to do so was nonetheless affected. *Id.* at 20.

Second, the statute only requires that some of the person’s *ability* to live his or her normal manner of living be affected, not that some of the person’s normal manner of living has itself been affected. In other words, *McCormick* recognizes that “the extent to which a person’s general ability to live his or her normal life is affected by an impairment is undoubtedly related to what the person’s normal manner of living is.” *Camaj, supra* at *3. However, “there is no quantitative minimum as to the percentage of a person’s normal manner of living that must be affected.” *Id.*

Third, the statute does not create an express temporal requirement as to how long an impairment must last in order to have an effect on “the person’s general ability to live his or her normal life.” *McCormick*, at Slip Op at 21.

The court in *Camaj* arguably could have decided the issue as a matter of law under *McCormick* rather than remanding. However, the court found that remand was necessary because “the record was not factually sufficient for us to determine the effect or influence that the impairment has had on plaintiff’s ability to lead a normal life as a matter of law....” *Camaj, supra* at *3. On remand, the trial court was instructed to utilize the following test for “the proper interpretation of the clear and unambiguous language in MCL 500.3135” as follows:

To begin with, the court should determine whether there is a factual dispute regarding the nature and the extent of the person’s injuries, and, if so, whether the dispute is material to determining whether the threshold is met. If there is no factual dispute (or no material factual dispute) then whether the threshold is met is a question of law for the court.

If the court may decide the issue as a matter of law, it should next determine whether the serious impairment threshold has been crossed. The unambiguous language of MCL 500.3135(7) provides three prongs that are necessary to establish a “serious impairment of body function”:

- (1) an objectively manifested impairment (observable or perceivable from actual symptoms or conditions);
- (2) of an important body function (a body function of value, significance, or consequence *to the injured person*) that;
- (3) affects the person’s general ability to lead his or her normal life (influences *some* of the plaintiff’s capacity to live his or her normal manner of living).

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The Court of Appeals further noted that under *McCormick*, the “serious impairment analysis is inherently fact- and circumstance- specific and must be conducted on a case-by-case basis.” *Camaj, supra* at *4. Finally, the court instructed the parties and the trial court to keep in mind that “[d]etermining the effect or influence that the impairment has had on a plaintiff’s ability to lead a normal life necessarily requires a comparison of the plaintiff’s *life before and after the incident.*” *Camaj, supra* at *3, citing *McCormick*, at Slip Op at 20 (emphasis added by *Camaj*). *McCormick* did not involve a plaintiff with a preexisting impairment. Therefore, the Supreme Court’s opinion did not define or elaborate upon the meaning of the phrase “life before and after the incident.” In *Camaj*, however, the plaintiff did have a past history of disability and inability to work in his pre-accident life as a result of other unrelated medical problems.

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